

**UNITED STATES DEPARTMENT OF COMMERCE****United States Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/314,001 05/19/99 ASLANOVA

L 33611YW002

EXAMINER

IM22/0514

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HOFFMANN, J

ART UNIT

PAPER NUMBER

1731

DATE MAILED:

05/14/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory Action

Application No.

09/314,001

Applicant(s)

ASLANOVA, LJUDMILA
GRIGORIEVNA

Examiner

John Hoffmann

Art Unit

1731

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 May 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search. (see NOTE below);
- (b) ☐ they raise the issue of new matter. (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

4. ☐ Applicant's reply has overcome the following rejection(s): one of the two 112 (first paragraph) matters- see attached sheet.

5. ☒ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

6. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached sheet.

7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):

Claim(s) allowed: _____

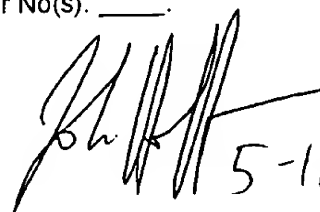
Claim(s) objected to: _____

Claim(s) rejected: 1-7 and 19.Claim(s) withdrawn from consideration: 8-18 and 20.

9. ☒ The proposed drawing correction filed on _____ a) ☐ has b) ☒ has not been approved by the Examiner.

10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

11. ☐ Other:


5-11-01

The proposed correction drawing does not show stabilization occurring in the stabilizing occurring in the stabilizing section.

Objections: Applicant is reminded that the outstanding objections are not Appealable. Correction of matters objected too - (or petitioning of the objections) will not be held in abeyance. **This Application will be held abandoned** if all objections are not properly addressed within the statutory time period - even if the rejections are appealed.

It is argued that the "means for stabilizing glass mass volume" can be "structural and relative relationship of section (6) with respect to furnace (5) and feeder means (8)", and therefore the means plus function limitation is definite. Since a relationship is not structure, and since 35 USC 112 paragraph 6 requires that means-plus-function limitations are drawn to structure, the present means-plus-function cannot be a relationship as Applicant argues. Equally important, there is no indication in the specification as originally filed that this is what is meant by the means-plus-function language - an Applicant cannot create or establish definitions in the middle of prosecution. The same applies to the means for stabilizing constituents.

Likewise, an opening is not structure, it is nothingness - thus the means for introducing the stabilized glass mass cannot be an opening.

It is argued that the "stabilizing" of the volume clearly conveys the feature that the volume of the glass changes as foam and bubbles are expelled. This is a mere

allegation. Examiner could find no support or description of anything of the sort in the instant specification or the prior art. On the contrary, as pointed out before, the specification only mentions that there is a "possible exit" of the gasses and foam. This would mislead anyone in the art to think that the exit is a only "possible" result of the stabilizing - and not a necessary and defining property of the claimed "stabilizing".

It is further argued that the "possible exit" section when taken in context with the section height yields no indefiniteness. Examiner disagrees - unless one uses a begging the question type argument which presupposes that the stabilizing requires the exit of the gases. However, to start with that presupposition is improper.

The arguments regarding "stabilizing constituents" are simply not understood as to how they apply to what is meant by the term. There is no mention of a single ingredient (in the concrete or in the abstract) which can be such a constituent. If anything, putting an additional ingredient into the melt will cause the melt to become less stabilized/homogenized - for example pouring silica on the top of the batch will create a high silica upper section relative to the bottom - this is clearly not stabilization/homogenization. More importantly, what applicant is now arguing is not supported by the specification or the prior art - Applicant cannot now define claim terms.

Regarding the rejection under 35 Usc 112 1st paragraph - regarding equivalents - Applicant is right. That part of the rejection is correct. However, the "means for stabilizing the glass" was not addressed - see the last sentence of the last full paragraph of page 4 of the final rejection

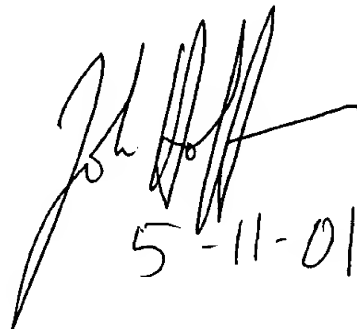
Re prior art rejections: The argument that there are changes in the compositions due to furnace atmospheric conditions is not convincing. The changes are minimal and the claims are very broad and still encompasses any possible shift due to oxidation states.

It is argued that Shofer does not have stabilization in section 12. The claims are not so limited. It is deemed that the areas immediately after the throat is part of the furnace and the stabilization section. It is clear that the glass becomes smooth by the time it is immediately after the throat. In other words the 'riser' is part of the furnace and part of the stabilizing section.

The fact that Shofner has no "concern" for stabilization is largely irrelevant as to whether Shofner discloses it.

The comments regarding Shofner's (18) as being part of the volume stabilization section is simply not understood. The rejection makes no indication that it is.

The reference to the filler is not understood - the claims do not require a filler.



Handwritten signature and date: 5-11-01